

REMARKS

Claims 1-3, 5-16, 30-38, 41-44, 47-52 and 66-71 are pending as of the issuance of the present Office Action. As a result of the above amendments, Claims 30-32, 41, 42, 68 and 71 have been amended, Claims 43, 44, 49 and 70 have been canceled, and Claims 72-75 have been added. Therefore, Claims 1-3, 5-16, 30-38, 41, 42, 47, 48, 50-52, 66-69, and 71-75 are at issue in this Application.

Allowed & Allowable Subject Matter

Claims 1-3, 5-16, 33-38, 66 and 67 are allowed.

Dependent Claims 47-52, 70 and 71 are allowable if rewritten in independent form including all limitations of the intervening claims. Independent Claim 42 has been amended to include the subject matter of allowable dependent Claim 49 and as a result, Claims 42 and 47, 48 and 50-52 are allowable. Similarly, independent Claim 68 has been amended to include the subject matter of allowable dependent Claim 70 and as a result, Claims 68, 69 and 71 are allowable.

Double Patenting Rejection

In paragraphs 4-6 and 8 of the Office Action, Claim 41 was provisionally rejected on the grounds of non-statutory obviousness-type double patenting over copending Application Nos. 11/211,319; 10/447,08; and 10/954,827. Since these rejections are provisional, Applicants will submit the necessary terminal disclaimer once they receive notice that Claim 41 is allowable.

Section 102 Rejections

In paragraph eleven of the Office Action, independent Claim 41 was rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 1,157,537 to Hess. Applicants respectfully traverse this rejection.

Hess does not anticipate amended independent Claim 41 because it does not disclose or suggest a lid cover with an uppermost top wall having an opening, an outer periphery, and *a substantially circular inner periphery*. Ex Parte Levy, 17 U.S.P.Q. 2d 1461 (BPAI 1990); In re

Lange, 209 U.S.P.Q. 288 (CCPA 1981) (in order to anticipate, the reference must describe or disclose all of the limitations of the claims). As shown in Fig. 2 of Hess, the top wall 14 has a circular outer periphery but no inner periphery. Furthermore, Hess does not disclose an element having *a circular outer periphery*. Instead, Hess' moveable plate 10 has a notch periphery resulting from the outwardly extending member 9 with thumb downturn 15. For these reasons, Hess does not anticipate Claim 41 and the Claim is allowable.

In paragraph twelve of the Office Action, Claims 68 and 69 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,294,014 to Wyatt. Independent Claim 68 has been amended to include the subject matter of allowable dependent Claim 70. As a result, Claim 68, 69 and 71 are allowable.

In paragraph thirteen of the Office Action, Claim 30 was rejected under 35 U.S.C. §102(b) as being anticipated by either Wyatt or U.S. Patent No. 5,123,574 to Poulos. Applicants respectfully traverse this rejection.

Amended independent Claim 30 is directed to a method for assembling a lid for a container and comprises the following steps: providing a cover configured to be attached to the container, the cover having an opening and a slot; providing a rotatable element having an aperture and an *upwardly extending actuator*; positioning the cover against at least one external guide to fix the angular position of the cover; and, moving the rotatable element *along a substantially vertical path and towards a lower interior region of the cover such that the actuator enters the slot*.

Regarding Wyatt, Figs. 1-3 establish that the moveable disk 18 has an outwardly extending lever 34, not one that is upwardly extending. The moveable disk 18 is positioned above or on the cover 16 by a depending lug 44 that is received within a central opening 40 of the cover 16. As a result, Wyatt's moveable disk 18 is positioned in an upper portion of the cover 16. While Wyatt is silent as to the assembly of the lid 14, one of skill in the art of lid design and manufacture recognizes that Wyatt's outwardly extending lever 34 necessitates pivotal movement of the disk 18 to allow for reception of the lever 34 in the aperture 32. One of skill further recognizes that vertical movement of the disk 18 towards the cover 16 results in the

lever 34 striking the upper side wall of the cover 16, thereby precluding the required step of moving the rotatable element along a substantially vertical path towards a lower interior region of the cover such that the actuator enters the slot. Consequently, Wyatt does not disclose all required steps in the method and Claim 30 is allowable.

Regarding Poulos, Figs. 1-3 show that the lid 10 includes a moveable disk 40 with an outwardly extending lever 44, not one that upwardly extends as required by the Claim. Like Wyatt, Poulos is silent as to the assembly of the lid 10. However, one of skill in the art of lid design and manufacture recognizes that Poulos' outwardly extending lever 44 necessitates pivotal movement of the disk 40 to allow for reception of the lever 44 in the aperture 36. When collapsing the exploded view of Fig. 3, one of skill further recognizes that vertical movement of the disk 40 towards the cover 30 results in the lever 44 striking the lower side wall of the cover 30. Thus, the assembly of the lid 10 cannot involve the required step of moving the rotatable element along a substantially vertical path towards a lower interior region of the cover such that the actuator enters the slot. Therefore, Poulos does not disclose all required steps in the method and Claim 30 is allowable.

Section 103 Rejections

In paragraph fourteen of the Office Action, Claims 31 and 32 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wyatt or Poulos. Applicants respectfully traverse this rejection.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference(s) must teach or suggest all of the claim limitations. The examiner bears the initial burden on factually supporting any prima facie conclusion of obviousness. *See* MPEP § 2142; *In re Vaeck*, 20 USPQ.2d 1438 (Fed. Cir. 1991).

Wyatt does not render amended Claim 31 or Claim 32 obvious because it neither discloses or suggests a cover having a tab extending outward from the cover. Applicants note that the Examiner did not identify any structure in Wyatt that remotely corresponds to the required tab. Due to the fact that Wyatt's cover 18 lacks the required tab, Wyatt does not teach

the required step of positioning the tab of the cover between a pair of external guides to fix the angular position of the cover. In addition, Wyatt's moveable disk 18 has an outwardly extending lever 34, not one that is upwardly extending. While Wyatt is silent as to the assembly of the lid 14, one of skill in the art of lid design and manufacture recognizes that Wyatt's outwardly extending lever 34, as explained in the preceding section, precludes the required step of moving the rotatable element along a substantially linear path and into an interior region of the cover such that the actuator extends through the slot. Consequently, Wyatt does not disclose all required steps in the method and Claims 31 and 32 are allowable.

With respect to Poulos, it does not render amended Claims 31 or 32 obvious because it does not disclose or suggest all required steps. Applicants note that the Examiner did not identify any structure in Poulos that remotely corresponds to the required tab. Since Poulos' lid 10 does not include a tab, Poulos does not teach the required step of positioning the tab of the cover between a pair of external guides to fix the angular position of the cover. Furthermore, Poulos' moveable disk 40 has an outwardly extending lever 44, not one that is upwardly extending. Like Wyatt, Poulos is silent as to the assembly of the lid 10. However, one of skill in the art of lid design and manufacture recognizes that Poulos' outwardly extending lever 44 precludes the required step of moving the rotatable element along a substantially linear path and into an interior region of the cover such that the actuator extends through the slot. Therefore, Poulos does not disclose all required steps in the method and Claims 31 and 32 are allowable.

In paragraphs fifteen through eighteen of the Office Action, Claim 41 was rejected under 35 U.S.C. §103(a) as being unpatentable over one of U.S. Publications 2006/0000832 to Smith et al., and 2003/0197012 to Smith et al. To resolve these rejections, Applicants have submitted herewith a declaration under 37 CFR 1.130, as outlined in page 7 of the Office Action. As mentioned above, Applicants will submit the necessary terminal disclaimer once they receive notice that Claim 41 is allowable.

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New Claims

Applicants have added dependent Claims 72-75, which depend from amended independent Claim 41. The added Claims are supported by the specification and do not introduce new matter.

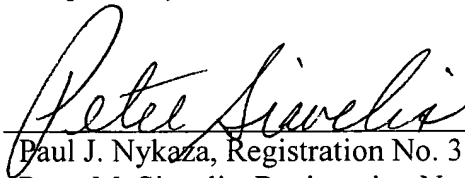
CONCLUSION

In view of the foregoing, Applicants believe that Claims 1-3, 5-16, 30-38, 41, 42, 47, 48, 50-52, 66-69, and 71-75 are in condition for allowance, and respectfully request early notice of the same. The Examiner is requested to contact the undersigned if the Examiner has any questions concerning this Reply or if it will expedite the progress of this application.

Respectfully submitted,

Dated: August 21, 2006

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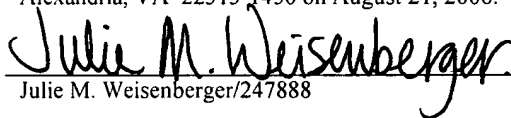
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